

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: : CASE NO. 18-69019-LRC
MARVELAY, LLC, :
Debtor. : CHAPTER 7

**TRUSTEE'S APPLICATION FOR APPROVAL OF EMPLOYMENT
OF PORTNOY, GARNER & NAIL, LLC,
AS SPECIAL LITIGATION COUNSEL FOR THE TRUSTEE**

COMES NOW Martha A. Miller, in her capacity as the Chapter 7 Trustee (the “**Trustee**” or “**Applicant**”) for the bankruptcy estate of Marvelay, LLC (the “**Debtor**”), and hereby files this Application for Approval of Employment of Garrett Nail and Portnoy, Garner & Nail, LLC, as Special Litigation Counsel for the Trustee (the “**Application**”). In support of the Application, the Trustee shows the Court as follows:

1. This case was commenced by the Debtor's filing of a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on November 9, 2018 (the "Petition Date") (Dkt. No 1).

2. Martha A. Miller was appointed as the interim Trustee on November 13, 2018 (Dkt. No. 5).

3. The Section 341 hearing was held and concluded on February 19, 2019, after which Martha A. Miller became the permanent Chapter 7 Trustee pursuant to 11 U.S.C. § 702.

4. The Trustee desires to retain Garrett Nail and Portnoy, Garner & Nail, LLC (collectively, “PGN”) with offices at 3350 Riverwood Pkwy, Suite 460, Atlanta 30339, (404) 688-8800, as Applicant’s special litigation counsel to pursue certain avoidance claims, including

fraudulent conveyance actions, and certain other causes of action and remedies on behalf of the Debtor's estate (collectively, the "Avoidance Claims and Related Causes of Action").

5. Applicant shows that it is necessary to retain special litigation counsel, in addition to its legal counsel of Lamberth, Cifelli, Ellis & Nason, P.A. ("LCEN"), to render legal advice and assistance to the Applicant, due to the number and scope of Avoidance Claims and Related Causes of Action. PGN and LCEN will coordinate efforts to avoid unnecessary duplication of services and fees.

6. The professional services PGN, as special litigation counsel, will provide to the Trustee include:

- (a) Legal advice in assessing the Avoidance Claims and Related Causes of Action and drafting appropriate legal documents in the course of such assessment;
- (b) Preparation on Trustee's behalf of the complaints, motions, pleadings, discovery papers, and all other papers reasonably necessary to pursue the Avoidance Claims and Related Causes of Action;
- (c) Legal advice regarding any trial or settlement offer with respect to the Avoidance Claims and Related Causes of Action;
- (d) Examination and defense of witnesses in deposition or trial relating to the Avoidance Claims and Related Causes of Action;
- (e) Preparation of pre-trial orders, preparation for trial, trial, and prosecution of any appeals or related proceedings as may arise from the Avoidance Claims and Related Causes of Action; and
- (f) Performance of all other legal services for Trustee regarding the Avoidance Claims and Related Causes of Action and attendant matters.

7. Applicant further shows that Garrett Nail is admitted to practice in this Court, has knowledge and substantial experience with regard to bankruptcy avoidance actions, fraudulent transfer claims, and the other matters in which the firm is to be engaged, and is well qualified to represent Applicant. Included with PGN's Bankruptcy Rule 2014 Verification, attached hereto as Exhibit "A", is the declaration of Garrett Nail, which includes hourly rates and policies regarding reimbursement of expenses. Applicant anticipates that PGN will seek reasonable compensation based upon the recognized factors for compensation under applicable law. No compensation will be paid by Applicant to PGN except upon application to, and approval by, the Bankruptcy Court after notice and hearing as required by law.

8. To the best of Applicant's knowledge: PGN represents no interest adverse to Applicant, Debtor, or the Debtor's bankruptcy estate in the matters upon which it is to be engaged; PGN's attorneys are disinterested persons under 11 U.S.C. §101(14) with regard to the matters upon which they are to be engaged; and the appointment of PGN will be in the best interests of the Debtor, its bankruptcy estate and creditors, and other parties in interest.

WHEREFORE, Applicant prays for authority to retain and employ the law firm of Portnoy, Garner & Nail, LLC, in this case for the purposes specified herein above, and that Applicant have such other and further relief as this Court deems just and proper.

This 15th day of October, 2020.

s/ Martha A. Miller
Martha A. Miller
Georgia Bar No. 507950
Chapter 7 Trustee

P.O. Box 5630
Atlanta, Georgia 31107
mmiller@mmillertrustee.com

EXHIBIT "A"

**RULE 2014 VERIFICATION WITH REGARD TO
EMPLOYMENT OF ATTORNEYS**

The undersigned hereby declares under penalty of perjury:

1. I am a Partner of the law firm of Portnoy, Garner & Nail, LLC, a limited liability company engaged in the practice of law with offices at 3350 Riverwood Pkwy, Suite 460, Atlanta 30339, (404) 688-8800 (the “PGN”). I am duly admitted to practice in the State of Georgia and in the United States District Court, Northern District of Georgia.

2. PGN has been asked to represent Martha A. Miller, in her capacity as Chapter 7 Trustee (“Trustee”) for the bankruptcy estate of Marvelay, LLC (“Debtor”). To the best of my knowledge, PGN has no professional, business, or other connection with the aforementioned Debtor, its attorneys, creditors, or any party in interest in this case.

3. PGN represents no interest which would be adverse to the estate of the Debtor in connection with the matters upon which PGN is to be engaged. Accordingly, I believe PGN is a “disinterested person” as that term is defined in 11 U.S.C. § 101(14), as modified by 11 U.S. C. § 1107(b).

4. By reason of the foregoing, I believe that PGN is eligible for employment and retention by Debtor pursuant to the Bankruptcy Code and the applicable Bankruptcy Rules.

5. PGN intends to apply to the Court for allowance of compensation and reimbursements of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and Orders of this Court.

6. I have extensive experience in bankruptcy matters, including having represented debtors and debtors in possession, committees, secured creditors, unsecured creditors, trustees, and purchasers of assets in bankruptcy. I have pursued and defended numerous avoidance actions, including fraudulent transfer claims and preference claims.

7. PGN has agreed with Debtor to bill at the rate of \$400 per hour for my time and \$150 per hour for paralegal time. PGN will charge ten cents per page for black-and-white document reproduction. PGN’s charges for electronic research are approximately equivalent to PGN’s direct costs for these services. Air travel will be at coach fare. Automotive travel will be subject to reimbursement at the IRS guideline amount or our out of pocket cost.

I verify that the above statements are true to the extent of my present knowledge and belief.

Dated this 15th day of October, 2020.

/s/ Garrett A. Nail

Garrett Nail

Georgia Bar No. 997924

CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing Application for Approval of Employment of Portnoy, Garner & Nail, LLC, as Special Litigation Counsel for the Trustee, using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

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I further certify that on this day I caused a copy of the foregoing Application for Approval of Employment of Portnoy Garner & Nail, LLC, as Special Litigation Counsel for the Trustee to be served via United States First Class Mail, with adequate postage prepaid on the following parties set forth below, at the address shown for each:

Marvelay, LLC.
2601 Summers St, Suite 300
Kennesaw, GA 30144

Dated: October 15, 2020.

/s/ Gregory D. Ellis
Gregory D. Ellis
Georgia Bar No. 245310
gellis@lcenlaw.com